

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14509 of Jeffrey Fox and Julie Miller, pursuant to Paragraph 8207.11 of the Zoning Regulations, for variances from the prohibition against allowing an addition to a nonconforming structure now exceeding the lot occupancy requirements (Paragraph 7105.12), the lot occupancy requirements (Sub-section 3303.1), the rear yard requirements (Sub-section 3302.1) to construct a deck to a nonconforming structure in a R-5-B District at premises 1760 U Street, N.W., (Square 151, Lot 213).

HEARING DATE: November 19, 1986
DECISION DATES: December 3, 1986, January 7, 1987, January 6, and February 3, 1988

INTRODUCTION

By order dated December 4, 1987, the Board denied the subject application. The Board concluded that the applicant had not met the burden of proof in establishing evidence of a practical difficulty upon the owners arising out of an exceptional or extraordinary condition inherent in the property itself.

Counsel for the applicants filed a timely motion for reconsideration or rehearing on December 18, 1987. In support of the motion for reconsideration, counsel for the applicants argued that the Board's order is unclear as to how the Board arrived at the conclusion that the applicants had not met the requisite burden of proof and why the requested relief would impair the integrity of the Zoning Regulations and map. Counsel further argued that the applicants had demonstrated that the property was affected by an exceptional or extraordinary situation in that the premises are located within the Strivers Section Historic District, is improved with an eighty year old nonconforming structure surrounded by an alley and attached structures on either side; and that the existing parking space cannot be eliminated under the Zoning Regulations. Counsel argued that the strict application of the Zoning Regulations would create a practical difficulty upon the owners in that strict compliance with the Zoning Regulations would be contrary to the guidelines of the historic district and would eliminate the existing parking space. At its public meeting of January 6, 1988, the Board reopened the record to permit the applicant an opportunity to submit a clarification of the historic preservation issue and further evidence of the existence of an enclosed rear porch. The counsel for the applicants

submitted the requested information on January 21, 1988. There was no opposition to the motion for reconsideration.

Upon review of the motion, the further submissions by the applicants, the record in the case, and its final order, the Board granted the motion for reconsideration and vacated its prior decision at its public meeting of February 3, 1988.

Upon further review of the motion, the record in the case, and its final order, the Board finds as follows:

FINDINGS OF FACT:

1. The subject property is located on the south side of U Street between 17th and 18th Streets, and is known as premises 1760 U Street , N.W. It is zoned R-5-B.
2. The site is rectangular in shape containing approximately 1,714 square feet of lot area with 17.14 feet of frontage along U Street and a depth of 100 feet.
3. The site is currently improved with a three-story plus basement, brick row dwelling which was constructed in approximately 1905 and is presently occupied as a single family residence. The site abuts a 10.25 foot public alley to the rear.
4. The subject structure is one of several similar connected row dwellings. The general neighborhood is characterized by single and multi-family structures in an extensive area of R-5-B zoning.
5. The applicants are seeking variance relief to permit the continued use of an existing rear deck. The deck was constructed in 1983 without benefit of proper building permits.
6. The deck is irregularly shaped and extends into the rear yard approximately 15.8 feet. The deck is accessible from an existing partially enclosed porch at the first floor level of the subject residence.
7. The applicants were not aware that building permits were required to permit the construction of the deck at the time that the deck was built. The applicants were informed of the need for a building permit in approximately May of 1986. The applicants then proceeded to apply for the appropriate permits with the District of Columbia Department of Consumer and Regulatory Affairs.
8. The applicants testified that the deck does not obstruct light and air to adjacent properties. There have been no complaints from the adjacent neighbors. The Board so finds.

9. The applicants testified that the deck provides for play area for their children which is easily accessible from the kitchen located on the first floor. The subject premises is located on a heavily trafficked thoroughfare and alley and no nearby outdoor play area is available which does not necessitate crossing busy streets. The elevated deck also provides security for the children with regard to rats which infest the alley and heavy vehicular traffic through the public alley to the rear of the site. The Board so finds.

10. The maximum allowable lot occupancy of the site is sixty percent or 1,028.4 square feet. The subject structure exceeded the lot occupancy requirements by approximately 167.97 square feet prior to the construction of the deck. The deck measures approximately 169.20 square feet. The total lot occupancy is 1,365.57 square feet. A variance of 337.17 square feet or 32.78 percent is required.

11. The minimum required rear yard is fifteen feet. The rear yard provided is 14.2 feet. A variance of 0.8 feet or 5.33 percent is required.

12. The maximum permitted FAR is 1.8 or 3,085.2 square feet. The subject structure exceeded the FAR requirements by approximately 375.36 square feet prior to construction of the deck. The total FAR is 3,629.76 square feet. A variance of 544.56 square feet or 17.64 percent is required.

13. The first floor level of the premises is at ground level on the U Street frontage and is approximately seven feet above ground level at the rear. The deck is elevated above the ground approximately 6.75 feet. If the deck were lowered to an above-ground elevation of four feet or less, no variance relief would be required.

14. The applicants testified that lowering the deck to eliminate the need for variance relief would create an undue hardship in that an existing on-site parking space would be eliminated and the rear entrance to the basement level of the house would be obstructed. The Board so finds.

15. The property is located in the Striver's Section Historic District. The existing partially enclosed porch is supported by the original brick pillars and was renovated in 1986 pursuant to D.C. Law 2.144 and approved by the Historic Landmark Committee. If the deck were lowered and moved closer to the existing dwelling in order to comply with the Zoning Regulations, the brick pillars would have to be removed resulting in damage to or loss of the existing partially enclosed porch.

16. The record contains several letters from neighboring property owners in support of the application.

17. A representative of the Residential Action Coalition testified at the public hearing in opposition to the application. The opposition was based on the fact that the construction of the deck began without first obtaining proper permits and that the applicant did not meet the requisite burden of proof.

18. The Board left the record open at the end of the public hearing to receive the report of Advisory Neighborhood Commission 1C. By letter received on November 20, 1986, ANC 1C indicated its unanimous support of the granting of the application. The ANC also submitted six statements in support of the application from nearby property owners. The ANC report failed to address specific issues or concerns and, therefore, can not be afforded "great weight" as set forth in the Supplemental Rules of Practice and Procedures before the BZA.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing Findings of Fact and the evidence of record, the Board concludes that the applicants are seeking area variances, the granting of which requires a showing through substantial evidence of a practical difficulty upon the owners arising out of an exceptional or extraordinary condition inherent in the property itself. The Board concludes that the burden of proof has been met. The property was developed prior to the adoption of the 1958 Zoning Regulations. The existing dwelling exceeds the permitted lot occupancy, therefore precluding any addition to the structure without variance relief. The premises is surrounded by improved properties and public space precluding the applicants from acquiring additional land to meet the zoning requirements. The applicants would suffer practical difficulties if the Zoning Regulations were strictly enforced in that compliance with the lot occupancy and rear yard requirements would result in the loss of the original historic brick pillars supporting the existing partially enclosed porch and lowering the deck would eliminate the existing parking space and ingress and egress to the ground floor level at the rear of the dwelling. The Board notes that the variance relief requested is not substantial and that there has been little or no adverse impact on adjacent and nearby properties.


The Board further concludes that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the Zoning Regulations. Accordingly, it is ORDERED that the application be GRANTED.

VOTE: Public Meeting of January 7, 1987: 4-1 (Charles R. Norris, William F. McIntosh, and Paula L. Jewell to deny; John G. Parsons to deny by proxy; Carrie L. Thornhill opposed to the motion).

VOTE: Public Meeting of February 3, 1987: 5-0 (Charles R. Norris, Paula L. Jewell, William F. McIntosh and Carrie L. Thornhill to reconsider and grant; John G. Parsons to reconsider and grant by proxy).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


EDWARD L. CURRY
Executive Director

FINAL DATE OF ORDER: APR 29 1988

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

14509order/LJP34

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



APPLICATION No. 14509

As Acting Executive Director of the Board of Zoning Adjustment, I hereby certify and attest a true and correct copy of the Order of the Board in the said Order dated APR 29 1988 postage prepaid to each party who appears in the public hearing concerning this application listed below:

P-600 311 990


ANC-1C

Jeffrey L. Fox
1706 U Street, N.W.
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Harriet B. Hubbard
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B. Harold Smith, Chairperson
Advisory Neighborhood Commission 1-C
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Washington, D.C. 20009

14509


EDWARD L. CURRY
Executive Director

APR 29 1988

DATE: _____